

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

**IN RE: E. I. DU PONT DE NEMOURS AND
COMPANY C-8 PERSONAL INJURY
LITIGATION**

CASE NO. 2-13-MD-2433

JUDGE EDMUND A. SARGUS, JR.

**MAGISTRATE JUDGE ELIZABETH P.
DEAVERS**

This document relates to: ALL ACTIONS

**PLAINTIFFS' MOTION FOR ENTRY OF AN ORDER APPOINTING A FEE
COMMITTEE PURSUANT TO PRE-TRIAL ORDER NO. 6**

I. INTRODUCTION

Pursuant to Pretrial Order No. 6 (“PTO 6”)[ECF No. 32]¹, at the appropriate time, a Fee Committee is to be appointed to make recommendations to this Court on the issue of how any money in the MDL 2433 common benefit Fee and Expense Funds shall be distributed (the “Fee Committee”). (*See* PTO 6 §IV.B.3.) Further, pursuant to this section, the Fee Committee is to be appointed by Plaintiffs’ Co-Lead Counsel with unanimous approval by the Plaintiffs’ Steering Committee (“PSC”). (*Id.*)

Plaintiffs’ Co-Lead Counsel respectfully submits that now is an appropriate time for the Court to enter an order regarding the appointment of a Fee Committee, as Plaintiffs’ Co-Lead Counsel has made appointments for the Fee Committee with unanimous approval of the PSC.

¹ Following the entry of PTO 6, it has been amended three times by way of PTO 6-A [ECF No. 49], PTO 6-B [ECF No. 4349], and PTO 6-C [ECF No. 5108]. None of these amendments pertain in any way to the composition, appointment, and/or proposed structure of any proposed Fee Committee.

DuPont has confirmed that it takes no position on the entry of a Case Management Order regarding the appointment of a Fee Committee.

II. ARGUMENT

The Court's authority over common benefit matters is derived from the United States Supreme Court's common benefit doctrine, as established in *Trustees v. Greenough*, 105 U.S. 527 (1881); refined in, *inter alia*, *Central Railroad & Banking Co. v. Pettus*, 113 U.S. 116 (1884); *Sprague v. Ticonic National Bank*, 307 U.S. 161 (1939); *Mills v. Electric AutoLite Co.*, 396 U.S. 375 (1970); *Boeing Co. v. Van Gemert*, 444 U.S. 472 (1980); and approved and implemented in the MDL context, in *inter alia*, *In re MGM Grand Hotel Fire Litig.*, 660 F. Supp. 522, 525-29 (D. Nev. 1987); and *In re Air Crash Disaster at Florida Everglades on December 29, 1972*, 549 F.2d 1006, 1019-21 (5th Cir. 1977). *See also* Manual for Complex Litigation, Fourth §§ 14.211, 20.312, 22.927 (2008).

PTO No. 6, which was entered on August 5, 2013, was "entered to provide for the fair and equitable sharing among plaintiffs of the costs of services performed and expenses incurred by attorneys acting for MDL administration and common benefit of all plaintiffs in this complex litigation." (PTO 6 at 1.) As part of PTO No. 6, the Court, by a subsequent Order, was to "appoint a qualified certified public accountant (the "CPA")...directed to establish two interest-bearing accounts to receive and disburse funds as provided..." in the subject PTO (the "Funds"). (*Id.* at 5.) Additionally, the order expressly stated that, "[n]o amounts will be disbursed without review and approval by the Court or such other mechanism as the Court may order. Specifically, such sums shall be distributed only upon Order of the Court in MDL 2433." (*Id.* at 12.) Finally, as set forth above, PTO 6 likewise indicates that, at the appropriate time, a Fee Committee will be appointed

to assist the Court in the distribution of these funds by making recommendations regarding same.
(*Id.* at 12.)

Consistent with PTO 6, it is submitted that it is now an appropriate time to enter an order regarding the appointment of a Fee Committee, which will allow the law firms who provided common benefit to this MDL and incurred expenses for the common benefit of this MDL to apply for and receive an award of common benefit fees and expenses as contemplated by PTO 6. Likewise, consistent with the PTO 6, Plaintiffs' Co-Lead Counsel, with unanimous approval by the PSC, have appointed the following individuals to the Fee Committee:

1. Robert A. Bilott, Esq. of Taft Stettinius & Hollister LLP
2. Michael A. London, Esq. of Douglas & London, P.C.
3. Jon C. Conlin, Esq. of Cory Watson, P.C.
4. Ned McWilliams, Esq. of Levin, Papantonio, Thomas, Mitchell, Rafferty, Proctor, P.A.

Each of these proposed Fee Committee members will use their experience, skills, and any and all means available at their disposal to fully review, audit, and otherwise vigorously and robustly analyze all of the common benefit time and expenses that are submitted by lawyers and law firms who have worked for the common good of this litigation. Following this thorough review, audit, and analysis, the Fee Committee will render a report containing its recommendations to a Special Master, discussed more fully below, on the issue of how any money in the MDL 2433 Fee and Expense Funds should be distributed to each law firm.

In addition to the approval of the appointments of the above-identified Fee Committee, Plaintiffs respectfully request that the Court appoint a Special Master to assist and oversee the workings of the Fee Committee. To this end, Plaintiffs respectfully recommend that the Hon. Daniel Stack (Ret.) be appointed to serve in this capacity, as he has previously been appointed in this litigation to serve as a Special Master and performed appellate review of Phase One Awards

pursuant to the Master Settlement Agreement, and allocated dollar values to Phase Two Awards pursuant to the Master Settlement Agreement. (*See* CMO 22 §B.) Moreover, Special Master Stack (ret.) has familiarity with the work performed by the lawyers involved, and has familiarity with what contributions different work performed makes to the overall common benefit of the litigation based upon his experience related to adjudicating common benefit fees and expenses in numerous other complex MDL settings, which render him well-suited for this role. Finally, after Special Master Stack receives the Fee Committee's recommendations and conducts his own research of the proposed allocations, then Special Master Stack will submit to the Court a Report and Recommendation.

III. CONCLUSION

For the reasons set forth above, Plaintiffs, with unanimous approval of PSC, and in accordance with PTO 6, respectfully request this Court grant the pending motion and approve the entry of Proposed Case Management Order No. 23, regarding the appointment of a Fee Committee.

DuPont takes no position on the entry of Proposed Case Management No. 23.

Respectfully submitted,

s/ Michael A. London

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was electronically filed with this Court's CM/ECF on this 5th day of June, 2018 and was thus served electronically upon all counsel of record.

/s/ Michael A. London